IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 506

A.B.T. MANUFACTURING CORPORATION,
Petitioner,

vs.

NATIONAL SLUG REJECTORS, INC.,
Respondent.

SUPPLEMENTAL PETITION FOR REHEARING.

Re Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE YOUR HONORS:

Petitioner respectfully requests leave to file this, its supplemental petition for rehearing, to be considered in conjunction with petitioner's petition for rehearing filed as of February 17, 1948.

In its supporting brief filed with the petition for writ of

certiorari, petitioner pointed out (p. 14) that the Circuit Court of Appeals for the Seventh Circuit by its decision (R. 524) held by express language that under the patent statute, Section 4886, 35 U. S. C. A., Sec. 31, in order to constitute a device patentable

> "There must be *novelty;* there must be *utility.* The statute exacts *nothing more.*"

In its petition for rehearing filed herein on February 17, 1948, petitioner pointed out that one of the four questions presented in its petition for writ of certiorari was:

> "1. Did the Circuit Court of Appeals correctly interpret Section 4886 of the Revised Patent Statutes, 35 U. S. C. 31 in holding that for a device to be patentable, the statute *'exacts nothing more'* than *'novelty and utility'?*"

In its petition for rehearing filed herein on February 17, 1948, petitioner restricted itself to that question and invited the court's attention to its holding in *Mercoid Corporation* v. *Mid-Continent Investment Co.,* 320 U. S. 661, 60 USPQ 21 at 24, to the effect that "the public interest is dominant in the patent system."

In the aforesaid petition for rehearing, petitioner concluded by observing (p. 2) that because of the presence of this dominating interest the petition for writ of certiorari heretofore prayed for should be allowed, if for no other reason than to decide whether or not the Circuit Court of Appeals for the Seventh Circuit has correctly interpreted the patent statute, Section 4886, which is a part of that patent system dominated by the public interest.

Since the filing of the aforesaid petition for rehearing, this court has rendered its opinion in *Funk Brothers Seed Co.* v. *Calo Inoculant Co.,* decided February 16, 1948, Appeal No. 208, 76 USPQ 280 at 282. In that decision this court,

speaking through the Honorable Mr. Justice Douglas, held that:

> "But a product must be more than new and useful to be patented; it must also satisfy the requirements of invention or discovery. *Cuno Engineering Corp.* v. *Automatic Devices Corp.*, 314 U. S. 84, 90, 91."

Unless a writ of certiorari is granted in the case at bar, there will remain written in the law of the Seventh Judicial Circuit a decision which, because of its conflicting holding with the recently expressed decision of this court in the *Funk* case, *supra*, on a related question, may hereafter be regarded as distinguishing from and result in erroneous interpretation of this court's decision in the Funk case.

Upon the foregoing premises, it is respectfully submitted that the petition for writ of certiorari should be granted, restricted to the first question presented in the petition for writ of certiorari, reading as follows:

> "1. Did the Circuit Court of Appeals correctly interpret Section 4886 of the Revised Patent Statutes, 35 U. S. C. 31, in holding that for a device to be patentable the statute '*exacts nothing more*' than '*novelty and utility*'?"

Respectfully submitted,

A.B.T. MANUFACTURING CORPORATION,
Petitioner.

By Clarence E. Threedy

CLARENCE E. THREEDY,
Its Attorney.

Chicago, Illinois,
February 20, 1948.

CERTIFICATION PURSUANT TO RULE 33 AS AMENDED OCTOBER 13, 1947.

I, Clarence E. Threedy, counsel for petitioner, HEREBY CERTIFY that this supplemental petition for rehearing is presented in good faith and not for the purpose of delay and is restricted to the grounds therein stated.

Clarence E. Threedy

CLARENCE E. THREEDY.